Development (1948) Department.

Letter Ms SERIES.

G.O. No. 4030

Dated 31-7-48.

[Despatch Abstract.]

Labour - International Labour Organisation - Conventions and Recommendations adopted by the ~~XXXX~~ Session in Montreal.

GOVERNMENT OF INDIA.
Ministry of Labour.

No. LC.71(1). Dated, New Delhi, the 3rd February 1948.

From

V. Narayanan, Esquire,
Deputy Secretary to the Government of India.

To

The Secretary to the Government of Madras,
Public Works Department,
Madras.

Sir,

Sub:- Conventions and Recommendations adopted by ~~XXIX~~ the Session of the International Labour Conference held in September - October 1946, in Montreal.

I am directed to enclose herewith the texts of:-

(i) Convention (No. 77) concerning medical examination for fitness for employment in industry of children and young persons;

(ii) Convention (No. 78) concerning medical examination of children and young persons for fitness for employment in non-industrial occupations;

(iii) Convention No. 79 concerning the restriction of night work of children and young persons in non-industrial occupations

(iv) Recommendation No. 79 concerning the medical examination for fitness for employment of children and young persons;

(v) Recommendation (No. 80) concerning the restriction of night work of children and young persons in non-industrial occupations;

adopted by the International Labour Conference at its XXIX session held at Montreal in September and October 1946. A copy of the statement proposed to be laid before the Central Legislature is also enclosed. As stated therein, the new Factories Bill, now before the Central Legislature, when passed into Law will contain suitable provisions to secure the application of the standards set out in Convention No. 77 in respect of workers employed in factories. Government of India have also under consideration the question of amending the Mines Act and the opportunity will be taken to incorporate suitable provisions to give effect to the Convention in regard to workers in the mines.

2. The question arises whether it would be possible to give effect to the principles of the Convention in all employments covered by the Employment of Children's Act, 1938. This act prohibits the employment of children under 12 years in any undertaking carrying on a scheduled employment irrespective of the number of workers employed therein. When the Factories Bill is passed into law, the provisions of the Convention will be applied to all establishments wherein ten or more persons are employed if power is used or twenty or more workers are employed where power is not used. The question now for consideration is about the feasibility of

applying the principles of the Convention in regard to workers in workshops in the scheduled employments employing less than the number specified above. I am to enquire whether the Provincial Government consider, in the light of their experience relating to the enforcement of the Employment of Children's Act, 1938, steps may be now taken to amend that Act or to promote a separate legislation to provide:-

(a) that children and young persons under sixteen years of age shall not be admitted to employment in the occupations set out in the schedule to the Employment of Children's Act, 1938 unless they have been found fit for the work on which they are to be employed by a medical examination;

(b) that such medical examination should be conducted annually till the children or young persons attain the age of sixteen years;

(c) that in occupations involving high health risks the medical examination and re-examination should be conducted till the age of nineteen years; and

(d) that the medical examination should not involve the child or young person or his parents in any expense. In considering this question regard should be had to Article 7 of the Convention that measures should be devised for ensuring "the stric enforcement of this Convention" and the facilities for medical examination available at the places where the scheduled employment are being carried on. In this connection I am to invite the attention of the Provincial Government to the observations at page 66 of the report of the Labour Investigation Committee that despite the provisions of the Act the employment of small children in match factories, mica cutting and splitting workshops in the smaller tanneries, in the shellac factories and in Bidi manufactories continues. Fuller particulars will be found in the Reports on the industries concerned.

3. I am also to request that the Provincial Government may give consideration to the provisions of Conventions No. 77 and 79 and especially as regards the feasibility of embodying as many of the standards set out in these Conventions as may be practicable in legislation regulating non-industrial labour. As the Provincial Government may be aware it is part of the Five Year Programme agreed to at the First Labour Ministers' Conference that there should be a Central Act regulating employment in non-industrial occupations. I am to request that this Ministry may be favoured with the opinion of the Provincial Government as regards the suitability or otherwise of incorporating the various provisions set out in these two Conventions in the proposed legislation.

4. I am further to invite the attention of the Provincial Government to the provisions of the two Recommendations and to request that as far as may be practicable effect may be given to them. I am further to request that this Ministry may be kept informed of the measures which the Provincial Government propose to take to give effect to the standards prescribed in the Conventions and Recommendations referred to in this letter.

I have the honour to be
Sir,
Your most obedient
Servant,

(Sd) V. Narayanan,
Deputy Secretary to the Government
of India.

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Subject:- Action proposed to be taken on the Conventions and Recommendations adopted by the XXIX Session of the International Labour Conference held in October 1946, in Montreal.

The XXIX Session of the International Labour Conference convened at Montreal in September-October 1946, adopted the following Conventions and Recommendations:-

(1) Convention No. 77 concerning medical examination for fitness for employment in industry of children and young persons;

(2) Convention No. 78 concerning medical examination of children and young persons for fitness for employment in non-industrial occupations;

(3) Convention No. 79 concerning the restriction of night work of children and young persons in non-industrial occupations;

(4) Recommendation No. 79 concerning the medical examination for fitness for employment of children and young persons;

(5) Recommendation No. 80 concerning the restriction of night work of children and young persons in non-industrial occupations.

As required under Article 19 of the Constitution of the International Labour Organisation, the Conventions and Recommendations are laid before the Legislature.

2. Convention No. 77 requires that:-

(a) Children and young persons under 18 years of age (the limit is 16 years of age in the case of India) shall not be admitted to employment in an industrial undertaking unless they have been found fit for the work on which they are to be employed by a thorough medical examination;

(b) that the fitness of a child or young person for the employment in which he is engaged shall be subject to medical supervision until he attains the age of 18 years (in the case of India, 16 years);

(c) in occupations involving high health risks, medical examination and re-examination for fitness for employment shall be required until at least the age of 21 years (19 years in the case of India); and

(d) the medical examination shall not involve the child or the young person or his parents in any expenditure.

3. The term 'industrial undertaking', so far as India is concerned, has been defined as including:-

(i) factories as defined by the Indian Factories Act;

(ii) Mines as defined in the Indian Mines Act;

(iii) Railways;

(iv) all employments covered by the Employment of Children's Act, 1938.

4. (i) There are provisions in the new Factories Bill,

now before the Legislature, for the enforcement of the standards laid down in the Convention, except (d) in paragraph 2 above, vide Section 69,70,77 and 87 of the Factories Bill. It would be necessary to make provision regarding (d). Proposals in regard to this will be submitted for the consideration of the Select Committee.

(ii) Government have also under consideration the question of amending the Indian Mines Act and the opportunity will be taken to make suitable modifications in the statute to give effect to the principles of the Convention in respect of mine workers.

(iii) Action will also be taken to apply the standards in regard to employees in railways.

(iv) Government are in correspondence with the Provincial Governments regarding the possibility of applying the Convention standards in employments covered by the Employment of Children's Act, 1938, namely, Bidi making, carpet making, cement manufacture including bagging of cement, cloth printing, dyeing and weaving, manufacture of matches, shellac manufacture, soap manufacture, tanning and wool cleaning. The definition of 'factories' incorporated in the new Factories Bill includes all establishments employing 10 or more persons if power is used or employing 20 or more persons if power is not used. When the Bill becomes law, the provisions of the Convention will become applicable to a considerable proportion of undertakings in the scheduled employments leaving a residue of establishments employing less than 10 persons, if power is used and less than 20 persons, if power is not used. The establishment so left out are the smaller undertakings, many of which are located in rural areas. Under present conditions, there may be difficulties in organising an effective system of medical examination of children and young persons and for continued medical supervision in accordance with the provisions of the Convention. Government are examining, in consultation with the Provincial Governments, the extent to which it would be possible to arrange for medical examination in regard to these cases. It is accordingly proposed not to ratify this Convention at present, but the matter will be reconsidered after the replies are received from Provincial Governments.

5. Convention No. 78 concerning medical examination of children and young persons for fitness for employment in non-industrial occupations provides:-

(a) for periodical medical examination of children and young persons under 18 years of age employed in non-industrial occupations other than family undertakings, non-industrial occupations being defined to include all occupations other than industrial, agricultural and maritime occupations.

(b) such medical examination should be continued upto the age of 21 years in occupations which involve high health risks.

(c) the medical examination should not involve the child or the young person or his parents in any expense;

(d) appropriate measures should be taken by the competent authority for vocational guidance and physical and vocational rehabilitation of children and young persons, found by medical examination to be unsuited to certain types of work or to have physical handicaps or limitations; and

(e) suitable measures (some of which are detailed in Article 7 of the Convention, namely, (i) that employers should be required to file and to keep available registers having either the medical certificate of fitness or the work permit or work book showing that there are no medical objections to the employment of the young persons working in their undertakings;

and (ii) national laws and regulations should determine measures of identification to be adopted for ensuring the application of the system of medical examination for fitness for employment to children and young persons engaged on their own account or on account of their parents in itinerant trading or any other occupation carried on in the streets or in places to which the public have access) should be taken for ensuring "the strict enforcement of the Convention".

6. Such control over non-industrial labour as exists in India is limited to specified categories of undertakings in the bigger urban areas. The Convention, on the other hand, applies to all non-industrial undertakings, irrespective of the number of persons employed and throughout the country. It can be ratified only if suitable measures can be taken for ensuring a strict enforcement of its provisions. The difficulties in arranging for medical examination and supervision referred to in paragraph 4 above are even greater in the case of the non-industrial undertakings to which this Convention applies. Further, the Convention requires that appropriate measures should be taken by the competent authority for vocational guidance and physical and vocational rehabilitation of children and young persons, found by medical examination to be unsuited to certain type of work and for physical handicaps or limitations. While these constitute a very desirable objective, adequate services do not exist in this country which would permit the acceptance of this obligation.

The Government of India do not therefore propose to ratify this Convention. Every effort will, however, be made to give effect, as far as may be practicable, to the principles of the Convention in legislation applicable to non-industrial labour.

7. Convention No. 79 concerning the restriction on night work of children and young persons in non-industrial occupations prohibits the employment of:-

(i) children below the age of 14 years (12 in the case of India) and children over 14 years of age (over 12 in the case of India) if subject to full-time compulsory school attendance, at night during a period of at least 14 consecutive hours including the interval between 8'0' clock in the evening and 8'0' clock in the morning; and

(ii) children over 14 years of age not subject to full-time compulsory school attendance and below 18 years (in the case of India this Provision is applicable to children over 12 years of age and not subject to full-time compulsory school attendance and to young persons under 15 years of age) at night for at least a period of 12 consecutive hours, including the interval between 10'0' clock in the evening and 6'0' clock in the morning.

Provision is also made for the grant of individual licences to enable children or young persons under the age of 18 years (15 years in the case of India) to appear at night as performers in public entertainments or to participate at night as performers in the making of cinematograph films, provided:-

(a) the period of employment does not continue after midnight;

(b) the child or young person is allowed a rest period of at least 14 hours; and

(c) that strict safeguards are prescribed to protect the health and morals of the children and to avoid interference with their education.

8. Night work by children is not common in India, except in towns, where children may be employed in clubs and places of entertainments. If the Convention is ratified, it would be necessary to set up machinery of the type detailed in Article 6 of the Convention. In view of the fact that night work in establishments covered by the Convention is relatively small, there will be little justification for setting up an elaborate system of public inspection and supervision which the Convention requires. Government do not therefore propose to ratify this Convention, but suitable provision will be included in legislation regulating non-industrial labour to give effect to the standards prescribed in the Convention as far as they may be practicable in the circumstances obtaining in this country.

9. Recommendations Nos. 79 and 80 elaborate the standards laid down in Convention Nos. 78 and 79. They constitute a desirable objective and will be given effect to the extent possible, but most of the provisions are incapable of immediate implementation of development.

10. Broadly speaking, these Conventions and Recommendations can be implemented only in countries which have reached a stage of development where every child is given the benefit of compulsory education upto the age of 14 years, where medical and public health services are so organised that it would be possible to provide for the medical examination of every child and further adequate records exist or can be maintained in regard to the employment of every person. Conditions in India vary considerably and this variation is the main reason for the inability of the Government of India to ratify the Conventions or give effect to the standards elaborated in the Recommendations.

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/True copy/

Office Assistant,
Madras Record Office.

k.y.s. 19.8.

GOVERNMENT OF MADRAS.
Development Department.

Letter/Miscellaneous No. 4030.

From

Sri. W.R.S. Sattianathan, I.C.S.,
Secretary to Government.

To

The Secretary to the Government of India,
Ministry of Labour,
New Delhi.

Dated, Fort St. George, the 31st July 1948.

Sir,

Sub:- Labour - International Labour Organisation - Conventions and Recommendations adopted of the XXIX Session in Montreal.

Ref:- Mr. Narayanan's letter No. LC.71(1) dated 3.2.1948.

I am directed to state that as most of the establishments in the Province of Madras will be covered by the Madras Shops and Establishments Act, 1947, the Madras Non-Power Factories Act, 1947 and the Revised Factories Bill, it is not considered necessary to amend the Employment of Children Act to incorporate the provisions of Convention 77. The Government of Madras agree that it is not practicable to implement the provisions of Conventions 78 and 79 and Recommendations 79 and 80 regarding non-industrial occupations, in the conditions obtaining in India at present.

Yours faithfully,

(Sd) W.R.S. Sattianathan,
Secretary to Government.

Copy to the Commissioner of Labour, Madras.

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/True copy/

Office Assistant,
Madras Record Office.

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k.y.s. 17.8.